



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Steven M. Kean
Senior Assistant City Attorney
Legal Department
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR95-1454

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 37213.

The City of Tyler (the "city") received a request for "routine, on-going, access to the police department's daily dispatch logs." Initially, the city seeks a ruling from this office that concludes that this request is an unenforceable request under chapter 552 of the Government Code because it does not request specific information and instead attempts to create an ongoing duty to make information available, some of which is confidential. Additionally, the city contends that sections 552.101 and 552.108 of the Government Code except the requested information from public disclosure.

Chapter 552 does not prohibit a governmental body from voluntarily complying with a standing request for information. However, neither does chapter 552 *require* a governmental body to comply with a standing request for information to be collected or prepared in the future. *See* Attorney General Opinion JM-48 (1983). However, because there is nothing to prevent the requestor from making daily requests for each day's newly created dispatch log, this office will address your arguments concerning the applicability of sections 552.108 and 552.101 to the department's daily log sheets.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The seventy-fourth legislature amended article 6701d, Vernon's Texas Civil Statutes, in House Bill 391 to provide that a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to, among others, a person who

provides the law enforcement agency with two or more of the following: (1) the date of the accident, (2) the name of any person involved in the accident, or (3) the specific location of the accident. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413 (Vernon). This act, however, applies only to "accident reports" required by article 6701d, Vernon's Texas Civil Statutes, or article 6701h, Vernon's Texas Civil Statutes.¹ Section 550.064 of the Transportation Code, formerly part of article 6701d, provides that the Texas Department of Transportation shall prepare and, upon request, supply accident report forms to suitable agencies or individuals. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Sess. Law Serv. 1025, 1694-95 (Vernon) (to be codified at Transportation Code § 550.064). The statute sets out the information that must be included in those forms. *Id.* Section 601.004 of the Transportation Code, formerly part of article 6701h, similarly provides for accident report forms to be prepared by the Department of Public Safety. *Id.*, 1995 Tex. Sess. Law Serv. at 1705-06. As "dispatch logs" do not fall within the definition of "accident reports" that are addressed in House Bill 391, this law does not apply to the requested dispatch logs. Therefore, the city may not withhold the requested information under section 552.101 of the Government Code in conjunction with the new legislation regarding accident reports.

Section 552.101 also excepts from disclosure information that if disclosed would constitute an invasion of an individual's privacy. Information must be withheld from disclosure under a common-law right of privacy if the information is highly intimate or embarrassing *and* if it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 682 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 328 (1982). You have not explained how the limited type of information contained in the daily log sheets would meet this test. However, if any of the entries of the log sheets at issue meet the common-law privacy test, you should explain to this office how they meet the test and specifically mark those entries. See Open Records Decision No. 394 (1983) at 4. Additionally, we note that there may exist other types of information in the dispatch logs that are confidential pursuant to various statutory provisions. Section 552.352 of the Government Code provides that distribution of confidential information is a misdemeanor offense and constitutes an act of official misconduct.

Section 552.108 excepts records from required public disclosure only when release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). The governmental body claiming the exception must reasonably explain, if the information does not supply the explanation on its face, how release of the records would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). However, you have not demonstrated how release of

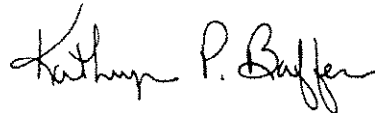
¹Effective September 1, 1995, these statutes were repealed and replaced with the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71 (Vernon). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.*, § 25, 1995 Tex. Sess. Law Serv. at 1871. As the new law took effect on September 1, 1995, we will refer to the new law in this ruling.

this information would unduly interfere with law enforcement. Additionally, in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curium*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*). We conclude that the requested information may not be withheld from disclosure pursuant to section 552.108.

In this instance, chapter 552 of the Government Code does not require the city to comply with the request for information in this particular instance. However, as we have noted, much of the information must be released to a requestor seeking dispatch logs.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Open Records Division

KPB/ch

Ref: ID# 37213

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(w/o enclosures)